

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JAN 24 2020

BY
DEPUTY _____

Ralph Lynn Ferguson, Jr,

§

CIVIL ACTION NO. 1:17cv00295

v.

§

§

JURY REQUESTED

J. KEITH STANLEY,

§

individually and as partner at

§

FAIRCHILD, PRICE, HALEY & SMITH, LLP. §

**PLAINTIFF'S SPECIFIC OBJECTIONS TO REPORT AND RECOMMENDATION
DISMISSING CASE FOR FAILURE TO SERVE DOCUMENT 10**

Plaintiff, Ralph Lynn Ferguson, Jr. jointly files this his Plaintiff's Specific Objections to Report and Recommendation Dismissing Case for Failure to Serve Document 10 and his Plaintiff's Motion and Memorandum in Support of Motion to Take Judicial Notice of Facts and would respectfully show the Court:

A. INTRODUCTION

Plaintiff is Ralph Lynn Ferguson, Jr.; defendant is J. KEITH STANLEY.

Plaintiff sued defendant for professional negligence, gross negligence, malice, intentional infliction of emotion distress and fraud.

Plaintiff's complaint was filed with the court on July 10, 1917.

B. OBJECTIONS

Magistrate Judge states in his Report and Recommendation: "The record does not indicate that defendant was served with a summons and complaint within 90 days after the complaint was filed." However, this is an error on the part of the Magistrate's Court because Docket Entry 6 is an "Affidavit of Service" which does establish facts that lawful and timely service of summons and complaint in this

lawsuit on defendant J. KEITH STANLEY. A true and correct copy of Docket Entry 6 is attached hereto as Exhibit A for the convenience of the Court.

Plaintiff has jointly filed Plaintiff's Motion and Memorandum in Support of Motion to Take Judicial Notice of Facts which Plaintiff incorporates herein and a copy of which is attached hereto for the Courts convenience as Exhibit B (without DE 6 attachment).

Docket Entry 6 "Affidavit of Service", copy is attached hereto as Exhibit A, clearly shows the fact that service of summons and complaint was made personally on defendant J. KEITH STANLEY on September 28, 2017, which is 80 days after Plaintiff's complaint was filed with the court which is in accordance with Fed. R. Civ. P. 4(m).

Personal service of Summons and Complaint with attachments was made on J. KEITH STANLEY at 413 Shelbyville St., Center, TX 75935, on September 28, 2017, by state licensed process server Jimmy Wagstaff SCH#10383, as evidenced by Docket Entry 6, copy attached hereto as Exhibit A. As evidenced by Docket Entry 6, copy attached hereto.

Magistrate Judge states in his Report and Recommendation: "Because Ferguson has not shown good cause for failure to serve defendant within 90 days, the court need not extend the time for service." No allegations of defect of service nor any facts or evidence suggesting same have been made in this case.

If in the event that service has not been properly made on defendant J. KEITH STANLEY in accordance with Fed. R. Civ. P. despite the fact that Docket Entry 6 speaks for itself as to proper service having been made on defendant J. KEITH STANLEY, Plaintiff believes such an error would be no fault of Plaintiff and therefor Plaintiff should be allowed the opportunity to remedy any error which is no fault his own but which affects his lawsuit.

CONCLUSION

The record in this cause at Docket Entry 6 "Affidavit of Service" does establish facts that defendant J. KEITH STANLEY was served according to Fed. R. Civ. P. 4(m). Therefor Magistrate Judge's Report and Recommendation Dismissing Case for Failure to Serve Document 10 should be rejected and not be adopted and this cause should be allowed to proceed in accordance with Fed. R. Civ. P. And, in the event service has not been deemed appropriate Plaintiff would move the Court for opportunity to remedy an error that is not due to any fault of Plaintiff.

Respectfully submitted,

By: Ralph Lynn Ferguson Jr
Ralph Lynn Ferguson, Jr Pro se
1192 Highway 27
DeRidder, Louisiana 70634
ralphsemail@hushmail.com
Phone: 337.462.2615
Fax: 337.462.0541

CERTIFICATE OF CONFERENCE

Plaintiff has not conferred with defendant J. KEITH STANLEY because defendant is in default and not participating in this action.

Ralph Lynn Ferguson Jr
Ralph Lynn Ferguson, Jr. Pro se

CERTIFICATE OF SERVICE

Service has not been made on defendant J. KEITH STANLEY because defendant is in default and not participating in this action.

Ralph Lynn Ferguson Jr
Ralph Lynn Ferguson, Jr. Pro se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Ralph Lynn Ferguson, Jr,

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FAIRCHILD, PRICE, HALEY & SMITH, LLP.

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**PLAINTIFF'S SPECIFIC OBJECTIONS TO REPORT AND RECOMMENDATION
DISMISSING CASE FOR FAILURE TO SERVE DOCUMENT 10**

EXHIBIT A

Docket Entry 6 "Affidavit of Service"

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
Eastern District of Texas

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXA

OCT 10 2017

BY
DEPUTY

Case Number: 1:17CV295

Plaintiff:
Ralph Lynn Ferguson, Jr.

vs.

Defendant:
J. Keith Stanley Individually and as Partner at Fairchild, Price, Haley &
Smith L.L.P.

For:
Ralph Lynn Ferguson
1192 Highway 27
Deridder, LA 70634

Received by Piney Woods Process LLC on the 20th day of September, 2017 at 5:45 pm to be served on J.
Keith Stanley, 413 Shelbyville Street, Center, TX 75935.

I, Jimmy Wagstaff, being duly sworn, depose and say that on the 28th day of September, 2017 at 1:47 pm,
I:

PERSONALLY delivered a true copy of the Summons in a Civil Action; Plaintiff's Original Complaint
with Exhibits. to: J. Keith Stanley at the address of: 413 Shelbyville Street, Center, TX 75935 and
informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process
Server, in good standing, in the judicial circuit in which the process was served.

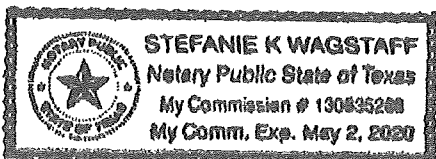
Subscribed and Sworn to before me on the 29th day
of September, 2017 by the affiant who is personally
known to me.

NOTARY PUBLIC

Jimmy Wagstaff
SCH#10383 EXP 06/30/2019

Piney Woods Process LLC
3009 South John Redditt Dr.
Suite E178
Lufkin, TX 75904
(936) 662-6320

Our Job Serial Number: PWO-2017000625
Service Fee: _____



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the

Ralph Lynn Ferguson, Jr.

Plaintiff(s)

v.

individually and as partner at
FAIRCHILD, PRICE, HALEY & SMITH L.L.P.

Defendant(s)

Civil Action No. 1:17-cv-00295

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

J. KEITH STANLEY
413 Shelbyville Street,
P.O. Drawer 1719,
Center, Texas 75935.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ralph Lynn Ferguson, Jr.
1192 Highway 27
DeRidder, Louisiana 70634

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

David A. O'Toole

Date: 7-10-2017

Signature of Clerk or Deputy Clerk

AD 440 (Rev. 09/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (f))

This summons for (name of individual and title, if any) J. KEITH STANLEY

was received by me on (date) 9/20/2017

☒ I personally served the summons on the individual at (place) 413 Shelbyville ST, Center, TX 75936
on (date) 9-28-2017 ; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
on (date) _____ ; or

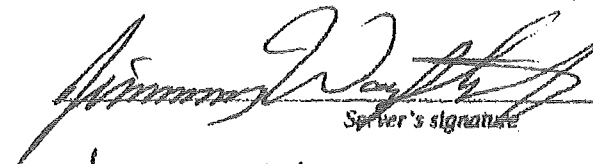
☐ I returned the summons unexecuted because _____ ; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 10-4-2017



Server's signature
Jimmy Wagstaff

Printed name and title

Po Box 374 Soquel, TX 75951

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Ralph Lynn Ferguson, Jr,

§

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CIVIL ACTION NO. 1:17cv00295

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J. KEITH STANLEY,

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**PLAINTIFF'S SPECIFIC OBJECTIONS TO REPORT AND RECOMMENDATION
DISMISSING CASE FOR FAILURE TO SERVE DOCUMENT 10**

EXHIBIT B

**Plaintiff's Motion and Memorandum in Support
of Motion to Take Judicial Notice of Facts**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JAN 24 2020

BY
DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Ralph Lynn Ferguson, Jr,

v.

J. KEITH STANLEY,
individually and as partner at
FAIRCHILD, PRICE, HALEY & SMITH, LLP.

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CIVIL ACTION NO. 1:17cv00295

JURY REQUESTED

**PLAINTIFF'S MOTION AND MEMORANDUM IN SUPPORT
OF MOTION TO TAKE JUDICIAL NOTICE OF FACTS**

Plaintiff Ralph Lynn Ferguson, Jr. moves for an order that the Court takes judicial notice as authorized by Federal Rule of Evidence 201, of the fact that defendant J. KEITH STANLEY was lawfully and timely served the summons and complaint in this lawsuit in accordance with Fed. R. Civ. P. 4(m).

The grounds for this motion are based on the fact that service of process was completed on defendant on September 28, 2017, as evidenced by Plaintiff's Docket Entry 6 in this lawsuit a copy of which is attached hereto as Exhibit A.

This motion is based on the pleadings and papers on file in this case and the incorporated memorandum of points and authorities.

A. INTRODUCTION

Plaintiff is Ralph Lynn Ferguson, Jr.; defendant is J. KEITH STANLEY.

Plaintiff sued defendant for professional negligence, gross negligence, malice, intentional infliction of emotion distress and fraud.

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B. ARGUMENT

A court has the authority to take judicial notice of adjudicative facts. The court can take judicial notice of facts that are not subject to reasonable dispute if the facts either (1) are generally known within the court's territorial jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454,458 (9th Cir. 1995); see *Dippin' Dots, Inc. v. Frosty Bites Distrib.*, 369 F.3d 1197, 1204-05 (11th Cir. 2004).

A court must take judicial notice of a fact if a party properly requests it and supplies the court with the necessary information. Fed. R. Evid. 201(c)(2). Attached as Exhibit A is the necessary information for this Court to take judicial notice of the requested facts.

Plaintiff's Exhibit A attached hereto is Plaintiff's Docket Entry 6 which establishes the fact of lawful and timely service of process of this lawsuit on defendant J. KEITH STANLEY. Service of Summons and Complaint was made on J. KEITH STANLEY by state licensed process service in accordance with Fed. R. Civ. P. as is evidenced by the "Affidavit of Service".

C. CONCLUSION

There has been no facts or evidenced introduced into this case that suggest that service of process was not carried out as stated by the process server in his "Affidavit of Service" as found in Docket Entry 6, copy attached hereto as Exhibit A. Fact defendant has been served summons and complaint in accordance with Fed. R. Civ. P. as is evidenced by Process Server's "Affidavit of Service" lodged in the case file as Docket Entry 6. For these reasons, Plaintiff asks the Court to take judicial notice of the requested fact that defendant J. KEITH STANLEY has been properly served.

Respectfully submitted,

By: Ralph Lynn Ferguson Jr
Ralph Lynn Ferguson, Jr Pro se
1192 Highway 27
DeRidder, Louisiana 70634
ralphsemail@hushmail.com
Phone: 337.462.2615

CERTIFICATE OF CONFERENCE

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Ralph Lynn Ferguson Jr

Ralph Lynn Ferguson, Jr. Pro se

CERTIFICATE OF SERVICE

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Ralph Lynn Ferguson Jr

Ralph Lynn Ferguson, Jr. Pro se